IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.3657 OF 2004

IN

SUIT NO.1160 OF 2001

...

Tata Engineering & Locomotive
Co.Ltd. ...Plaintiffs

v/s.

M.G.Automobiles & Ors. ...Defendants

And

The Court Receiver,High Court,
Bombay ...Respondent

...

Mr.Gaurav Joshi with Mr.Avinash Joshi and Mr.H.N. Vakil i/b Mulla & Mulla for the Plaintiffs.

Mr.R.A.Fernandes for the Defendants.

...

CORAM: D.K.DESHMUKH, J.

DATED: 23RD DECEMBER,2005

P.C.:

1. The Plaintiff by this Notice of Motion claims interim order in terms of prayer clauses (a) and (c). There does not appear to be any dispute that the property described in Exh.A-1 of the plaint is mortgaged by the Defendant to the Plaintiff. The property is lease hold rights in a plot of land in Raichur Indurstrial area.

2. The only dispute raised on behalf of the Defendants are that the Defendants are not the owners of the plot. The Plaintiff is not seeking an order for sale of the ownership right. The Plaintiff is seeking an order for sale of the lease hold rights, which are held by the Defendants and which have been mortgaged by them with the Plaintiff. The Defendant are not willing to act as an agent of the Receiver to be in possession of the property. Even third parties have not come forward to be agent of the Receiver to be in possession of the property. In this situation,

therefore, in my opinion, it will be appropriate to grant the order in terms of prayer clause (a). It is accordingly so ordered.

3. So far as order sought in terms of prayer clause (c) is concerned, the learned counsel appearing for the Defendants submits that though the Defendants were in possession of the property from 1-6-2003 till 31-8-2004 they have not executed any agency agreement, therefore, the Defendants are not liable to pay royalty for that period. However, perusal of the report of the Receiver which is annexed to the affidavit filed in support of Notice of Motion shows that the Defendants have given an undertaking to be in possession of the property as an agent of the Receiver. Therefore, they cannot deny their liability to pay the royalty. So far as the amount of royalty is concerned, admittedly, the Receiver has fixed the amount of royalty and that order of the Receiver fixing the amount of royalty has admittedly not been challenged by the Defendants. Therefore, they are liable to pay the royalty at that rate to the Receiver for the period during which they were admittedly in possession of the property. Notice of Motion is , therefore, also granted in terms of

prayer clause (c). Motion disposed of.

...